



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/28482/2013
IA/28484/2013
IA/28491/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 4th April 2014 and 21st May 2014**

**Determination Promulgated
On 1st July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE WILSON

Between

**YASIR JAVEED QURESHI
SADIA YASIR
ESHNA-YASIR QURESHI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: On 4th April 2014 - Mr S Jaisri, Counsel, instructed by Maher & Co
On 21st May 2014 - Mr S Jaisri, Counsel, instructed by Maher & Co
For the Respondent: On 4th April 2014 - Mr L Tarlow, Home Office Presenting Officer
On 21st May 2014 - Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is a matter where the 1st Appellant and his wife and children as dependants (whose appeals I have not considered this morning), apply with leave against the decision of the First-tier Tribunal Judge Archer who dismissed all appeals against the refusal by the Secretary of State to allow 1st Appellant leave to remain in the United Kingdom as an Tier 1 entrepreneur.
2. The issue before the judge was very narrow but I am satisfied it was primarily a factual issue that required detailed consideration. It was not a simple allocation of whether or not points were acquired or not because in your application the Respondent at page 2 accepted that you largely met the requirements of the relevant Immigration Rule, paragraph 245DD, but no points were awarded because it was not considered that your occupation met National Qualification Framework Level 4 or above, the relevant notice in this context means that the core service's business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in the administration, marketing or website functions of the business. In other words, ancillary to that.
3. The refusal letter goes on to say:

"Your stated job title of Marketing Consultant does not reflect the services that your business is offering. The evidence you have supplied for business activity shows that the core service of your business is courier and freight."
4. The judge dismissed that application. The determination shows as a whole that there were a number of matters of quite large substance in that determination that appears to have absolutely no relevance to the point in issue, namely effectively the whole of pages 4, 5, 6, 7, 8, 9 and most of page 10.
5. The essential point that is being argued, in respect of which leave was granted by Upper Tribunal Judge McGeachy is it said that the judge did not properly consider all the evidence submitted on behalf of the Appellant, although it is also correct he does not appear to have considered the nature of the Appellant's work and whether it is occupation skilled at AQ4 Level 4. In other words, the judge has not properly considered the refusal granted to Appendix A Attributes.
6. The matter effectively can be fairly summarised if one looks at QA Speedy Freight Services Limited business plan. This sets out that essentially, at page 19 of the bundle that was before the First-tier Judge, that they are a specialist company involved in the importing and exporting of goods using, crucially, expertise and connections in the freight market to offer competitive rates to its clients. It is not a freight company that has its own distribution service.

7. Now, the relevant issue is actually looking at the Appellant's job tasks, which are set out at page 16. It shows, for example, a tick Marketing Consultant, discussing business methods, quantitative market research, collating, finding advertising teams. That is his title. I accept that within that, therefore, there is clearly a distinction to be made, firstly whether or not the freight service as a whole is that of a specialist organisation and the marketing within that is therefore at a high level or simply, as the Respondent asserted, that it was merely an ancillary aspect of the business.
8. The criticism is that the judge failed to really enter into that analysis. There is no analysis of the situation. There is no consideration of the code of practice, there is no consideration whether or not therefore the Appellant's business was in law sufficient to meet the levels required or not.
9. Although it is therefore a question of fact, and normally the Upper Tribunal would be reluctant to interfere with a primary finding of fact, I am not satisfied that the judge was actually concentrating on the core issue that he had to determine. It may well be that he got confused. It may well be that actually he made the right decision. But I am not satisfied on a bare reading of the determination that it is clear which way he was thinking. I am concerned that he was still considering, at paragraph 22, that he was marketing and importing clothing from abroad. That is not the situation. It is marketing the arrangements to bring clothing in from abroad: subtly but materially different.
10. So on that primary ground of appeal, without considering the grounds of appeal relating to the dependants, whose applications fall to be determined in line with this Appellant, I am satisfied there is an error of law.
11. After submissions from both advocates I am satisfied this is an appropriate matter for further evidence and submissions on in the Upper Tribunal.
12. Having announced my decision on the 4th April I then made directions for the matter to be listed for a final hearing.;

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13. Mr Bramble helpfully lodged a copy of the archived code of practice for skilled workers 6th April 2013. Mr Bramble's and Mr Jaisri's concentration was referenced to SOC20103543 (referred to subsequently as 3543) marketing associate professionals. The relevance of this document is an introduction - this document is aimed at employers who are looking to sponsor a migrant through the points-based system. It mainly applies to Tier 2 (General) and Tier 2 (Intra-Company Transfer) categories. However it also applies to some parts of Tier 5 to post-study workers switching to Tier 1 (Entrepreneur) and to work permit holders applying for settlement. It is also used by UK Border Agency caseworkers. It is therefore relevant guidance for consideration. The general use of the document is as follows - you should use this document to determine what skill level and minimum rates of pay are for any job

you may want to recruit for and obtain the relevant classification code when assigning a certificate of sponsorship. The marketing associate professional gives the following example job tasks:

- Discusses business methods, products or services and targets customer group with employer or client in order to identify marketing requirements.
- Establishes an appropriate quantitative and qualitative market research methodology and prepares proposals outlining programmes of work and details of costs.
- Collates and interprets findings of market research and presents results to clients.
- Discusses possible changes that need to be made in terms of design, price, packaging promotion etc. in light of market research with appropriate departments.
- Briefs advertising team on client requirements, monitors the progress of advertising campaigns and liaises client on potential modifications

Related job titles:

- Business development executive.
- Fundraiser.
- Market research analysis.
- Marketing consultant.
- Marketing executive.

Salary rates: new entrants £17,400, experienced £21,000.

14. The corporate business plan for Q and A Speedy Freight Limited sets out an introduction that it is a team of professionally qualified MBAs offering freight services to companies and businesses located in southeast England. Under business environment and goals as well as by reference to where their business activity and reference to trade volumes say expertise in connections in the freight market to offer competitive rates to its clients Q and A Speedy business model is designed to develop alliances with shipping companies for obtaining wholesale rates, maximising corporate customer base and to offer a unique, efficient and cost-effective service. The short term key objectives were to meet deadlines and offer best services to our customers to explore all available resources whilst offering prices to offer solutions to complex shipping consignments. To keep ourselves updated with the latest developments, legal requirements and Regulations for appropriate training and seminars. The contract that was relied upon, one was from Geno Services

Limited that makes reference to Q and A Speedy Freight Services as a market consultant services to be provided during the length of this contract the market consultant shall serve the client and perform all services related to pricing, shipping schedules, preparing freight proposals if the client may require in connection with his business including preparation of shipping documents.

15. Mr Bramble's contention was that job description 3543 and its related job titles seemed to be the appropriate box that the Appellant was seeking to establish he fell within. I was asked to look at the business plan products to services and a brief letter and that was the evidence that was lodged before the Secretary of State. Mr Bramble could also state that it was clear from his file that the description 3543 was put before the case owner although there was no relevant note as to what the case owner concerned had considered. The general letter from Geno rather than a contract was lodged at appeal stage and was not available at the date of decision, it was postdecision. Mr Bramble accepted that it was not an easy matter to resolve, he confirmed that on his understanding of the refusal letter which was congruent to Mr Jaisri's and myself that this was the only matter that the case owner was concerned about. If I was satisfied as to the job qualification it would therefore be appropriate for me to allow the appeal, alternatively I could refer the matter back to the Secretary of State.
16. Mr Jaisri's argument was that read as a whole the evidence before the Secretary of State was clear that this was a business to business enterprise. It was clear that within the context of a large developed economy that the various methods of bringing goods into the United Kingdom were both diverse and the rates of which a person may have to pay a freight company could clearly vary. He asked me to draw the common sense analogy between requiring airfreight for perishable goods, shipping for non-perishable low fashion items as against the demand to bring possibly non-perishable but items that may have a limited period when they would be attractive to market into the UK. Within that context and looking at the Appellant's business essentially he would be carrying out the methods analysis set in 3543. The company would need to look at the request from their client, what type of goods, make a evaluation of what was available within the market place, make a recommendation to discuss price and it would be ancillary to that that the shipping documents would be supplied. Mr Jaisri emphasised that he regarded that is important because the shipping documents he fairly accepted would not fall within Tier 4 but that was the ancillary matter of the company not its prime business activity. I reserved my decision which I now give with my reasons.
17. On occasions application for a leave to remain as an entrepreneur are moderately straightforward as I observed in court a car washing business would not reach Tier 4 level. On occasions however business proposals are not clear as to which if any relevant code they attract. I am satisfied that this indeed is such a business case. I do accept broadly the points submitted by Mr Jaisri such that I am satisfied overall that the Respondent did not fairly take into account that this business of Q and A Speedy Freight Services Limited is essentially a business to business model. As Mr Bramble fairly accepted the company is not simply a courier of freight. Overall after careful

consideration of the documents I am satisfied that the business broadly falls within "3543;" it is discussing business methods and methods of delivering within a complex economic environment. There would be inevitably ancillary paperwork but that is ancillary, the core of the business however I am satisfied is that of a skilled company well within the criteria generally of NVQF Level 4. It therefore follows that the Appellant has 25 points issued to him under attributes.

18. There being no other matter essentially under dispute, it therefore follows that the other points would be awarded as claimed. The immigration appeal therefore succeeds. I have carefully considered whether it is appropriate to make a costs order in this matter as the appeal has succeeded however overall having regard to the complexities of this matter I am satisfied a fee award is not appropriate. There was no application for an anonymity order and none appears to be appropriate.

Andrew Wilson
30th June 2014

Deputy Upper Tribunal Judge Wilson